

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.
2010 DEC 27 PM 2:36
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SO. DIST. OF GA.

DELANO A. MIDDLETON,

Plaintiff,

v.

TIM POLITE, JUSTIN REDMOND,
and DISTRIBUTION SERVICES
INTERNATIONAL,

Defendants.

CASE NO. CV410-272

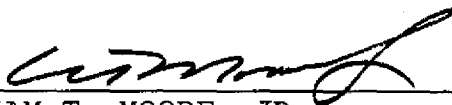
O R D E R

Before the Court is the Magistrate Judge's Report and Recommendation (Doc. 3), to which objections have been filed (Doc. 6). After a careful de novo review, the Court concurs with the Magistrate Judge's Report and Recommendation, except as stated below, and finds Defendant's objections to be without merit.

The Report and Recommendation seeks to dismiss Plaintiff's claim with prejudice. However, this dismissal results because this Court does not have jurisdiction over any claim asserted. "Dismissals of actions that do not reach the merits of a claim, such as dismissals for lack of jurisdiction, ordinarily are without prejudice." Mitan v. Int'l Fid. Ins. Co., 23 F. App'x 292, 298 (6th Cir. 2001); accord Auto-Owners Ins. Co. v. Dixon, 2006 U.S. Dist. LEXIS 57495, at *7 (M.D. Ga. Aug. 16, 2006)

(unpublished). A district court should only dismiss with prejudice a case over which it lacks jurisdiction in the rare circumstance where the court is exercising its inherent power, such as imposing a sanction for misconduct. See Caribbean Broad. Sys., Ltd. v. Cable & Wireless PLC, 148 F.3d 1080, 1091 (D.C. Cir. 1998). At present, such is not the case here. Therefore, the Report and Recommendation is **ADOPTED AS AMENDED** and is the Court's opinion in this action. This case is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED this 27th day of December 2010.



WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA